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No. 10-192

Supreme Court, U.S.
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In The
Supreme Court of the United States

MICHELLE ROSS,

Petitioner,

v.

PFIZER INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where the Sixth Circuit's opinion affirming summary judgment in the District Court does not conflict with a decision of this Court or a court of appeals, and where Petitioner does not claim that the Sixth Circuit's ruling implicates an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT

Respondent Pfizer Inc., a nongovernmental corporate party to this proceeding, has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
ROSS'S EMPLOYMENT WITH PFIZER	2
INITIAL INTERVIEWS FOR THE OPEN SUPERVISOR POSITION	3
SELECTION OF AMY SHACKELFORD FOR THE OPEN SUPERVISOR POSITION	4
PFIZER'S ENCOURAGEMENT TO ROSS TO SEEK OTHER OPPORTUNITIES	5
REASONS FOR DENYING THE PETITION	7
I. THE SIXTH CIRCUIT'S RULING DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR ANY COURT OF APPEALS	7
II. THE SIXTH CIRCUIT'S RULING DOES NOT ADDRESS AN UNSETTLED QUESTION OF FEDERAL LAW	8
CONCLUSION	9

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 8

FEDERAL STATUTES

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* 1

42 U.S.C. § 1981 1

Fed. R. Civ. P. 56 7

STATEMENT OF THE CASE

PROCEEDINGS IN THE LOWER COURTS

Petitioner Michelle Ross ("Ross") filed suit against Respondent Pfizer Inc. ("Pfizer") on May 11, 2007, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981. Ross alleged she was subjected to discrimination based on her race (African-American) when she was not selected for a promotion to the position of Supervisor in Pfizer's Corporate Accounting and Analysis ("CA&A") department, located in Memphis, Tennessee. Ross also claimed she was constructively discharged from her employment with Pfizer after she was not selected for the promotion.

Discovery in the suit ended on May 27, 2008. Ross filed a Motion to Compel on June 3, 2008. Among the issues raised in her Motion, Ross sought to compel discovery regarding job postings for supervisory or management positions in Pfizer's "New York corporate accounting office." Pfizer had objected to these discovery requests as irrelevant and overbroad. The Magistrate Judge denied Ross's Motion in its entirety on July 22, 2008. Ross appealed the Magistrate Judge's Order. The District Judge denied Ross's appeal and affirmed the Magistrate Judge's Order on March 30, 2009.

Pfizer filed a Motion for Summary Judgment as to all of Ross's claims on July 15, 2008. The District Court granted Pfizer's Motion and dismissed all of Ross's claims on March 30, 2009.

Ross filed her Notice of Appeal as to the District Court's order on Pfizer's Motion for Summary Judgment and Ross's Motion to Compel on April 29, 2009. After briefing, the Sixth Circuit Court of Appeals heard oral argument on March 3, 2010. On March 23, 2010, the Sixth Circuit affirmed the District Court's grant of summary judgment and denial of Ross's Motion to Compel.

Ross filed an untimely petition for a panel rehearing and a rehearing *en banc* of her appeal on April 9, 2010. After the Sixth Circuit granted Ross leave to file her petition, it denied her petition for a panel rehearing and rehearing *en banc* on May 10, 2010.

ROSS'S EMPLOYMENT WITH PFIZER

Ross began her employment as a Staff Accountant in Pfizer's CA&A department in Memphis in August 2000. Ross was promoted to Senior Staff Accountant in February 2005.

During the majority of Ross's employment in the CA&A department, Staff and Senior Staff Accountants in the department reported to one of four Supervisors. Those Supervisors, in turn, reported to the Manager of the department. In 2005, the four Supervisors in CA&A were Tim Reynolds, Laurie Ford, Donna Kook, and Ronda Bush. The Manager of the department at that time was Monica Morgan.

Each of these Supervisors specialized in a particular area of the CA&A department and managed a team of Staff and Senior Staff Accountants. Tim Reynolds managed benefits accounting; Donna Kook managed bank reconciliations; Laurie Ford managed financial reporting; and Ronda Bush also managed financial reporting, including tax and royalties accounting.

Ross's Supervisor was Tim Reynolds. Throughout her employment in CA&A, Ross's job duties were primarily focused on employee benefits accounting.

INITIAL INTERVIEWS FOR THE OPEN SUPERVISOR POSITION

In May 2006, Supervisor Ronda Bush was promoted to Manager of the General Ledger, leaving a vacant Supervisor position in CA&A. Pfizer posted the opening for the Supervisor position to begin the selection process. The posting for the open Supervisor position listed, among other things, the preferred qualifications of "three-plus years of big 4 accounting (audit)" experience and "[p]revious supervisory experience."

Five candidates were selected to interview for the open Supervisor position: Ross, Amy Shackelford, Susan Smith, Donna Kook, and Angela French. These candidates initially were interviewed individually by Laurie Ford, Tim Reynolds, Ronda Bush, and Monica Morgan. After interviewing all of the candidates,

Ford, Reynolds, and Bush provided Morgan their feedback and recommendations regarding the two candidates who should advance to a second round of interviews.

Based on this feedback and her own evaluation of the candidates, Morgan selected Shackelford and Smith for a second round of interviews. In Morgan's judgment, Shackelford and Smith had the strongest skill sets for the open position, including the preferred requirement of public accounting audit experience. Ross and the other candidates did not have public accounting audit experience. In addition, Ross's exposure to financial reporting, other than in the benefits area, was very limited. Ross learned of the selection of these two candidates on May 25, 2006.

SELECTION OF AMY SHACKELFORD FOR THE OPEN SUPERVISOR POSITION

Once Shackelford and Smith completed the second round of interviews, the final decision on the Supervisor position rested with Morgan. Morgan determined that, overall, Shackelford was the better candidate to replace Ronda Bush for two reasons.

First, Shackelford had the relevant and preferred public accounting audit experience. Shackelford had previously worked at KPMG, a "big 4" accounting firm. This "big 4" public accounting audit experience was important to Morgan because it provides exposure to

large, Fortune 500 companies like Pfizer. Morgan felt individuals with public accounting audit experience generally have a higher level of understanding of the balance sheet and the overall financial reporting process. The financial reporting performed by Ford's and Bush's teams involved more aspects of the balance sheet, compared to the benefits accounting performed by Ross.

Second, Shackelford had previously served as interim Supervisor for Laurie Ford's financial reporting area when Ford was on maternity leave. The supervisory responsibilities of Ford and Bush overlapped in many ways, and the two positions often worked closely together. Therefore, as interim Supervisor, Shackelford already had successfully performed job duties very similar to those of the position she was seeking to fill.

PFIZER'S ENCOURAGEMENT TO ROSS TO SEEK OTHER OPPORTUNITIES

Morgan recognized that Ross was disappointed by the promotion decision. She met with Ross on more than one occasion to give her feedback on the interview process and discuss ways in which Ross could position herself for future promotional opportunities. Morgan and Reynolds also discussed giving Ross more leadership opportunities and experience in new areas. Reynolds also expressed to Ross his hope that Ross would stay with Pfizer. He told Ross that

Morgan wanted to meet with her to discuss giving Ross more leadership opportunities.

Ross also expressed her dissatisfaction with the promotion decision to Human Resources Director Dan Brown. Brown discussed with Ross additional development opportunities within Pfizer and addressed her concerns about the interview process. Brown encouraged Ross to continue with Pfizer and to explore ways to enhance her experience so she could compete for the next promotional opportunity. Brown told Ross that Reynolds, her Supervisor, had always spoken highly of her and that she was considered "top talent" at Pfizer. He also told Ross he would support her attendance at leadership conferences and could arrange for her to gain additional experience with the audit department.

In the meantime, however, Ross had already started her search for a new job. As early as May 25, 2006, the day she learned she would not proceed to the second round of interviews, Ross began to reach out to headhunters. By June 1, 2006, Ross had already applied for a position with Federal Express. Ross accepted a position with Federal Express as a senior accountant on July 14, 2006, and announced her resignation from Pfizer on July 18, 2006. Ross's last day of employment with Pfizer was July 28, 2006.

REASONS FOR DENYING THE PETITION

Though it is difficult to discern the exact grounds for Ross's Petition, she apparently asks this Court to grant certiorari to give guidance as to when courts should grant summary judgment in employment discrimination cases. (Pet. at 14-16). She also apparently asks this Court to examine a discovery ruling which was affirmed by the court below. (Pet. at 15). In raising these issues, Ross fails to set forth any compelling reason for the Court to grant her Petition. She does not show the decision below conflicts with a decision of this Court or any Court of Appeals. Nor does she show the decision below addresses an unsettled question of federal law. Her Petition should be denied.

I. THE SIXTH CIRCUIT'S RULING DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR ANY COURT OF APPEALS

Ross does not identify any conflict between the Sixth Circuit's ruling and a decision of this Court or any Court of Appeals. To be sure, she uses her Petition to advance her belief that courts inordinately grant summary judgment for employers in employment discrimination cases (a belief undoubtedly *not* shared by employers). But regardless, her views on summary judgment do not create a conflict with any decision of this Court or with a decision of any Court of Appeals which would warrant granting her Petition. Indeed, the court below properly applied *Fed. R. Civ. P. 56* and this Court's summary judgment

jurisprudence, including *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), in reaching its decision.

Distilled to its essence, Ross's Petition is a rehash of the same, failed arguments she made below. Regrettably, she continues to misstate the facts. She continues to misapprehend the law. And she continues to challenge the well-reasoned rulings below, including a discovery ruling where the lower courts deemed not relevant an employment decision over two years after her denial of promotion involving different jobs, different decision makers, and a different employing unit. In short, Ross's claims of error in this Court lack factual and legal support, and they are insufficient to warrant review by this Court.

II. THE SIXTH CIRCUIT'S RULING DOES NOT ADDRESS AN UNSETTLED QUESTION OF FEDERAL LAW

Ross apparently views this case as a vehicle for the Court to clarify its summary judgment jurisprudence in employment discrimination cases. She asks the Court for "guidance surrounding what this Court meant when it held that at summary judgment that Court's [sic] should review all the material facts." (Pet. at 16). In making her request, however, Ross fails to explain how the Court's previous guidance on summary judgment is lacking or how the summary judgment standard set forth by the Court in previous decisions is unclear.

Put simply, this is an unremarkable case. It is not destined for a chapter in the law school text books. It is not infused with weighty legal issues. It involves a promotion decision where race played no role. Ross disagrees with that decision. She has challenged it in lengthy legal proceedings. The District Court after briefing and oral argument properly granted summary judgment in Pfizer's favor. The Sixth Circuit after briefing and oral argument properly affirmed the District Court. There is no important, unsettled question of federal law for this Court to review. It is time for these proceedings to end.

CONCLUSION

Ross fails to identify any compelling reason for the Court to grant her Petition. She identifies no conflict between the ruling below and a decision of this Court or any Court of Appeals. Nor does she show how the decision below in any way implicates an unsettled question of federal law. Pfizer respectfully requests that the Petition be denied.

Respectfully submitted,

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